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In Re:  
Paul D Christensen,  
Debtor,

Case No. 04-60786  
Chapter 7 Case

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**NOTICE OF HEARING AND MOTION FOR RELIEF FROM THE STAY**

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TO: Debtor(s) and other entities specified in Local Rule 9013-3.

1. PRIMUS Automotive Financial Services, Inc. DBA Mazda American Credit moves the Court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this motion on September 28, 2004 at 1:00 PM o'clock, in Courtroom No. 2, at the United States Courthouse, 118 South Mill Street, Fergus Falls, MN.
3. Any response to this motion must be filed and delivered not later than September 23, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than September 17, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**
4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on July 2, 2004. The case is now pending in this court.
5. This motion arises under 11 U.S.C. §362(d) and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3, and 9017-1. Movant seeks relief from the automatic stay in §362(a) to foreclose its lien against the 2002 MAZDA PROTEGE WGN 5D (the collateral), and requests the court permit Movant to immediately enforce the order requested, lifting the 10 day stay imposed by Rule 4001(a)(3).

6. Movant requests relief from the stay for cause under §362(d)(1). Debtor is delinquent under the terms of the original contract with Movant. Movant requests relief under §362(d)(2). The Debtor has no equity in the collateral, and the collateral is not necessary to an effective reorganization.
7. Movant gives notice that it may, if necessary, call Heather Hendrix, or some other representative of Movant, from Movant's offices in Minnesota, to testify regarding the debt and value.
8. This notice of motion and motion also serve as notice of default required by Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d 232 (Minn.1980). If the default is not cured before the hearing, Movant will repossess the property promptly upon the Court signing the Order.
9. A separate Memorandum of Fact and Law is attached hereto and made a part hereof.

**WHEREFORE**, PRIMUS Automotive Financial Services, Inc. DBA Mazda American Credit moves the Court for an order modifying the automatic stay of §362(a) and such other relief as may be just and equitable.

Dated: September 1, 2004

**STEWART, ZLIMEN & JUNGERS, LTD.**

/e/ Linda Jeanne Jungers

Linda Jeanne Jungers, Atty ID #5303X

Attorneys for Movant

430 Oak Grove Street #200

Minneapolis, MN 55403

612-870-4100

This is a communication from a debt collector attempting to collect a debt. Any information obtained will be used for that purpose.

MINNESOTA DEPARTMENT OF PUBLIC  
SAFETY DRIVER & VEHICLE SERVICES DIVISION  
45 MINNESOTA ST., ST. PAUL, MN 55103  
CONFIRMATION OF LIEN PERFECTION - 1

CHRISTENSEN YVONNE MARIE  
CHRISTENSEN PAUL DONALD  
2349 SHERBURNE AVE  
ECKER MN 55308

REGISTRATION NO. 1771  
St. Paul, MN

\*

JF667

1ST SECURED PARTY

**LIEN HOLDER**

02 Year	MAZD Make	4HPR5 Model	H2690P020 Title No.
M1BJ246021497693 VIN		08/23/02 Security Date	NO Rebuilt

RETAIN THIS DOCUMENT - See reverse  
for instructions on how to remove this lien.

MAZDA AMERICAN CREDIT  
PO BOX 105614  
ATLANTA GA 30348-5614

**EXHIBIT A**

## MINNESOTA SIMPLE INTEREST VEHICLE RETAIL INSTALLMENT CONTRACT

DATE 08/23/2002

RECEIVED

Buyer (and Co-Buyer) Name and Address (Including County and Zip Code)

CREDITOR (Seller Name and Address)

YVONNE MARIE CHRISTENSEN  
PAUL DONALD CHRISTENSEN  
12349 SHERBURNE AVE  
BEEFER MN WRIGHT 55308

STEINBRING CHEVROLET, INC.  
3710 S HWY 29  
ALEXANDRIA MN 56308

AUG 27 2002

Y5A2A9NK08

You, the Buyer (and Co-Buyer, if any), may buy the vehicle described below for cash or on credit. The cash price is shown below as "Cash Price." The credit price is shown below as "Total Sale Price." By signing this contract, you choose to buy the vehicle on credit under the agreement on the front and back of this contract.

New/Used	Year and Make	Model	GVW If Truck (lbs.)	Vehicle Identification Number	Use For Which Purchased
NEW	2002 MAZDA	PROTEGE		JM1B12A6021497693	<input checked="" type="checkbox"/> Personal <input type="checkbox"/> Agricultural <input type="checkbox"/> Commercial

Trade-In	Year and Make	Model	GVW If Truck (lbs.)	Vehicle Identification Number	Use For Which Purchased
	2000 CHEVROLET S10				

ITEMIZATION OF AMOUNT FINANCED

1. Cash Price	\$ 18288.00 (1)
2. Down Payment	
Third Party Rebate Assigned to Creditor	\$ N/A
Cash Down Payment	\$ N/A
Trade-In (description above)	\$ N/A
Total Down Payment	\$ N/A (2)
3. Unpaid Balance of Cash Price (1 minus 2)	\$ 18288.00 (3)
4. Amounts paid on your behalf (Seller may be retaining a portion of these amounts)	
To Public Officials:	
(i) for license, title, & registration fees \$ 301.50	
(ii) for filing fees \$ 3.50	
(iii) for taxes (not in Cash Price) \$ 1188.59	
Total	\$ 1493.59
To Insurance Companies for:	
Credit Life Insurance	\$ N/A
Credit Disability Insurance	\$ N/A
To _____ for _____	\$ N/A
To _____ for _____	\$ N/A
To _____ for _____	\$ N/A
To STEINBRING CHEVROLET ADMIN FEE	\$ 25.00
Total	\$ 1518.59 (4)
5. Amount Financed (3 plus 4)	\$ 19806.59 (5)

## FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of your credit as a yearly rate	The dollar amount the credit will cost you	The amount of credit provided to you or on your behalf	The amount you will have paid when you have made all scheduled payments	The total cost of your purchase on credit, including your downpayment of \$ N/A
4.90 %	\$ 2610.61	\$ 19806.59	\$ 22417.20	\$ 22417.20

Payment Schedule	Number of Payments	Amount of Each Payment	When Payments are due
Your payment schedule will be:	59	\$ 373.62	monthly starting 10/07/2002
	1 final	\$ 373.62	

Prepayment: If you pay off your debt early, you will not have to pay a penalty.  
Security Interest: You are giving a security interest in the vehicle being purchased.  
Contract: Please see this contract for additional information on security interest, nonpayment, default, the right to require repayment of your debt in full before the scheduled date, and prepayment penalty.

COMMERCIAL OR AGRICULTURAL USE CONTRACTS: If you purchased the vehicle for commercial or agricultural use, you must pay a late charge on the portion of each payment received more than 10 days late of 7.5 percent of the late amount or \$65.00, whichever is less.

Any change in this contract must be in writing and signed by you and the Creditor.

Buyer Signs *Yvonne Marie Christensen* Co-Buyer Signs *Paul Donald Christensen*

YOU ACKNOWLEDGE THAT YOU HAVE READ AND AGREE TO BE BOUND BY THE ARBITRATION PROVISION ON THE REVERSE SIDE OF THIS CONTRACT.

**NOTICE TO THE BUYER**  
Do not sign this contract before you read it or if it contains any blank spaces. You are entitled to an exact copy of the contract you sign. Buyer (and Co-Buyer) acknowledge that (i) before signing this contract, Buyer (and Co-Buyer) received and reviewed a true and completely filled in copy of this contract and (ii) at the time of signing this contract, Buyer (and Co-Buyer) received a true and completely filled in copy of this contract, signed by both Buyer (and Co-Buyer) and the seller. **IMPORTANT: THIS MAY BE A BINDING CONTRACT AND YOU MAY LOSE ANY DEPOSITS IF YOU DO NOT PERFORM ACCORDING TO ITS TERMS.**

Buyer Signs *Yvonne Marie Christensen* (Co) Buyer Signs *Paul Donald Christensen*

By signing below, the Seller accepts this contract. If no other Addressee is named in a separate assignment, attached to this contract the Seller assigns it to Mazda American Credit.

Seller STEINBRING CHEVROLET, INC. By *Debbie* Title *Ms*

MC 17622-01 Aug 02 (Previous editions may NOT be used)

MIN

## INSURANCE

YOU MAY OBTAIN VEHICLE INSURANCE FROM A PERSON OF YOUR CHOICE.

LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED.

CREDIT LIFE, CREDIT DISABILITY AND OTHER OPTIONAL INSURANCE ARE NOT REQUIRED TO OBTAIN CREDIT AND WILL NOT BE PROVIDED UNLESS YOU SIGN AND AGREE TO PAY THE PREMIUM.

☐ Credit Life Insurer  
\$ N/A Premium Insured(s)  
Signature(s)

☐ Credit Disability Insurer  
\$ N/A Premium Insured  
Signature

☐ Other Optional Insurance N/A Term  
Insurer \$ N/A Premium  
Signature

Credit Life and Credit Disability Insurance are for the term of the contract. The amount and coverages are shown in a notice of agreement given to you today.

You are required to insure the vehicle. If a charge is shown below, the Creditor will try to buy the coverages checked for the term shown. Coverages will be based on the cash value of the vehicle at time of loss, but not more than the limits of the policy.

☐ Comprehensive ☐ \$ N/A Deductible Collision  
☐ Fire-Theft-Combined Additional Coverage  
☐ Towing and Labor  
☐ Term N/A Months (Estimate)  
Premium \$ N/A

## QUESTIONS?

**MAZDA**  
Mazda American Credit.

PLEASE CALL US AT 1-800-945-8000  
or  
Visit us at [www.mazdaofamerica.com](http://www.mazdaofamerica.com)

SEE BACK FOR ADDITIONAL AGREEMENTS  
02-001

EXHIBIT B

ORIGINAL

**Vehicle Summary With NADA Values**  
**N.A.D.A Official Used Car Guide**  
**Monday, August 23, 2004**

**Guide Edition:** Midwest Used Car Guide - July 2004

**Vehicle Description:** 2002 MAZDA  
 PROTEGE-4 CYL. WGN 5D 5

**VIN:** JM1BJ246021497693      **Weight:** 2716  
**Stock #:**      **MSRP:** \$16,335

<b>N.A.D.A. Base Values:</b>	<b>Retail:</b>	<b>\$11,525</b>	<b>Trade:</b>	<b>\$9,575</b>	<b>Loan:</b>	<b>\$8,625</b>
Mileage Value (N/A Miles)		N/A				
Accessories Values		\$0		\$0		\$0

<b>N.A.D.A Adjusted Values:</b>	<b>Retail:</b>	<b>\$11,525</b>	<b>Trade:</b>	<b>\$9,575</b>	<b>Loan:</b>	<b>\$8,625</b>
Appraiser Adjustment Value		\$0				

<b>Adjusted Values:</b>	<b>Retail:</b>	<b>\$11,525</b>	<b>Trade:</b>	<b>\$9,575</b>	<b>Loan:</b>	<b>\$8,625</b>
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**Accessories:**

	<b>Retail</b>	<b>Trade</b>	<b>Loan</b>
Alum/Alloy Wheels	w/body	w/body	w/body
Compact Disc Player	w/body	w/body	w/body

# EXHIBIT C

**Appraiser Adjustments:**

NADA assumes no responsibility or liability for any errors or omissions or  
 any revisions or additions made by anyone on this report.  
 All NADA values are reprinted with permission of N.A.D.A. Official Used Car Guide Company Copyright NADASC 2004

In Re:  
Paul D Christensen,

Debtor,

Case No. 04-60786  
Chapter 7 Case

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**VERIFICATION FOR MOTION FOR RELIEF FROM STAY**

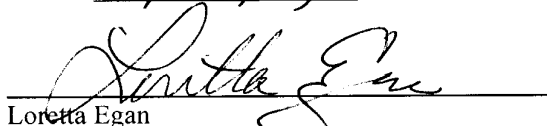
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I, Loretta Egan, Vendor Supervisor for PRIMUS Automotive Financial Services, Inc. DBA Mazda American Credit, the Creditor herein, declare under penalty of perjury that the following is true and correct according to the best of my knowledge, information and belief, and based on the Creditor's business records:

1. I am legally competent to testify and am personally familiar with the debt owed by Debtor to the Creditor on account no. 31669920.
2. The Debtor owes the Creditor \$13,585.55, payoff amount as of August 23, 2004, plus accrued unpaid interest thereon since that date. The monthly loan payment is \$373.62. As of August 23, 2004, the loan payments are in arrears \$742.16 for payments owing since July 7, 2004. Yvonne Christensen is a cosigner on the loan documents and is jointly liable for the debt.
3. The debt owed to the Creditor is secured by a perfected lien on a 2002 MAZDA PROTEGE WGN 5D. The current NADA published retail value of the collateral is \$11,525.00.
4. True and correct copies of the title documents are attached to the Motion as Exhibit "A". True and correct copies of the loan documents are attached as Exhibit "B".
5. Loan documents require insurance be maintained to protect the Creditor's interest in the collateral.

No evidence of insurance has been provided since filing.

Dated: 8/30/04



Loretta Egan  
Vendor Supervisor for PRIMUS Automotive Financial Services, Inc. DBA Mazda American Credit  
National Bankruptcy Svc Center  
PO Box 537950  
Livonia, MI 48153-7950

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:  
Paul D Christensen,  
Debtor,

Case No. 04-60786  
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**MEMORANDUM OF FACT AND LAW**

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PRIMUS Automotive Financial Services, Inc. DBA MazdaAmerican Credit ("Movant") submits this Memorandum of Fact and Law in support of its motion for relief from the stay.

**FACTS**

Movant is the holder of a secured claim, and is thus a party in interest. Movant has a valid and perfected security interest in the collateral.

The total net balance due on the Contract is \$13,585.55 as of August 23, 2004. On information and belief, the collateral has an NADA retail value of \$11,525.00. NADA pages showing this collateral value are attached as Exhibit "C".

Movant's collateral is subject to depreciation in that the collateral is being used, subjecting the same to wear and tear, while Debtor is failing to make payments. The debt is co-signed by Yvonne Christensen. Either she or the Debtor is believed to have possession or control of the collateral.

There has been a further material default in that the Debtor has failed to comply with the Contract provision requiring Debtor to supply Movant with evidence of collateral insurance. On information and belief, the Debtor has failed to maintain such insurance.

**ARGUMENT**

Pursuant to 11 U.S.C. §362(d)(1), a creditor is entitled to relief from the automatic stay "for cause, including the lack of adequate protection of an interest in property of such creditor." In this case, there is a lack of adequate protection as follows:

- Failure to make the payments required by the Contract since July 7, 2004.

- Failure to make payments due post petition under the Contract.
- Failure to maintain physical damage insurance on the collateral.

Movant has not been provided with adequate protection of Movant's interest in the collateral.

Such circumstances constitute cause, within the meaning of §362(d)(1), justifying relief from the stay.

See, United States Association of Texas v. Timbers of Inwood Association, Ltd. (In re Timbers of Inwood Association, Ltd.), 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed. 2d 740 (1988); In re Reinbold v. Dewey County Bank, 942 F.2d 1304, 1306 (8th Cir. 1991). Pursuant to 11 U.S.C. §362(g), the burden is on the Debtor to prove adequate protection and/or absence of cause.

Pursuant to 11 U.S.C. §362(d)(2), relief from the automatic stay is also appropriate if the Debtor has no equity in the property and the property is not necessary to an effective reorganization. See, In re Gellert, 55 B.R. 970 (Bkrtcy. D.N.H. 1983). In the present case, the balance due Movant on the Contract is \$13,585.55. It appears Debtor has no equity in the collateral. No evidentiary hearing is required on the issue of equity unless Debtors dispute it. Powers v. American Honda Finance Corp., 216 B.R. 95, 97 (N.D.N.Y. 1997). There is no reorganization proposed by the Debtor in this Chapter 7 case. Pursuant to 11 U.S.C. §362(g), the burden is on Debtor to establish that collateral is necessary for reorganization.

Bankruptcy Rule 4001(a)(3) imposes a stay of 10 days which the court may, in its discretion, order is not applicable so that Movant may immediately enforce and implement the order granting relief. Advisory Committee Notes to 1999 Amendments to Bankruptcy Rule 4001.

Dated: September 1, 2004

**STEWART, ZLIMEN & JUNGERS, LTD.**  
/s/ Linda Jeanne Jungers  
Linda Jeanne Jungers, Atty ID #5303X  
Attorneys for Movant  
430 Oak Grove Street #200  
Minneapolis, MN 55403  
612-870-4100



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:  
Paul D Christensen,  
Debtor,

Case No. 04-60786  
Chapter 7 Case

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**UNSWORN CERTIFICATE OF SERVICE**

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I, Linda Jeanne Jungers, declare under penalty of perjury that on September 2, 2004, I mailed copies of the attached Notice of Hearing and Motion for Relief from the Stay with Exhibits, Verification, Memorandum of Fact and Law, Certificate of Service, and proposed Order, by first class mail postage prepaid to each entity named below at the address stated below for each entity.

Paul D Christensen  
16777 County Rd 4  
Osakis, MN 56360

Yvonne Christensen  
16777 County Rd 4  
Osakis, MN 56360

Logan M Moore  
Attorney at Law  
1118 Broadway  
Alexandria, MN 56308

Tamara L Yon  
Trustee in Bankruptcy  
PO Box 605  
Crookston, MN 56716

U.S. Trustee  
1015 U.S. Courthouse  
300 South 4th Street  
Minneapolis, MN 55415

Executed on: September 2, 2004

Signed: /e/Linda Jeanne Jungers  
Linda Jeanne Jungers  
STEWART, ZLIMEN & JUNGERS  
430 Oak Grove Street, #200  
Minneapolis, MN 55403

04-03517-0

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:  
Paul D Christensen,  
Debtor,

Case No. 04-60786  
Chapter 7 Case

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**ORDER FOR RELIEF FROM THE STAY**

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PRIMUS Automotive Financial Services, Inc. DBA Mazda American Credit's Motion for an order granting relief from the stay came before the Court on September 28, 2004 at 1:00 PM o'clock.

Based on the arguments of counsel, all the files, records and proceedings herein, the court being advised in the premises, and the court's findings of fact and conclusions of law, if any, having been stated orally and read in open court following the close of evidence,

IT IS HEREBY ORDERED:

1. The automatic stay is modified to permit PRIMUS Automotive Financial Services, Inc. DBA Mazda American Credit to repossess and sell the  
2002 MAZDA PROTEGE WGN 5D, VIN JM1BJ246021497693  
in accordance with applicable state law.
2. Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3), this Order is effective immediately.

Dated: \_\_\_\_\_

\_\_\_\_\_  
United States Bankruptcy Judge